UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION

MDL No. 3047

Case Nos.: 4:22-md-03047-YGR-PHK

JOINT LETTER BRIEF ON SCHOOL DISTRICT PLAINTIFFS' SEARCH TERMS

Judge: Hon. Yvonne Gonzalez Rogers
Magistrate Judge: Hon. Peter H. Kang

This Filing Relates to:

Baltimore County Board of Education v. Meta, et al., Case No. 24-cv-01561

Board of Education Harford County v. Meta, et al., Case No. 23-cv-03065

Board of Education of Jordan School District v. Meta, et al., Case No. 24-cv-01377

Breathitt County Board of Education v. Meta, et al., Case No. 23-cv-01804

Charleston County School District v. Meta, et al., Case No. 23-cv-04659

Dekalb County School District v. Meta, et al., Case No. 23-cv-05733

Irvington Public Schools v. Meta, et al., Case No. 23-cv-01467

Saint Charles Parish Public Schools v. Meta, et al., Case No. 24-cv-01098

School District of the Chathams v. Meta, et al., Case No. 23-cv-01466

Spartanburg 6 School District v. Meta, et al., Case No. 24-cv-00106

The School Board of Hillsborough County, Florida v. Meta, et al., Case No. 24-cv-01573

Tucson Unified School District v. Meta, et al., Case No. 24-cv-01382

Dear Judge Kang:

Pursuant to the Court's Standing Order for Discovery in Civil Cases, Discovery Management Order No. 10 (Dkt. 1157), as extended by stipulation and order entered on September 19, 2024 (Dkt. 1163), and the October 2, 2024 Joint Status Report (ECF 1192), the School District Plaintiffs and Defendants respectfully submit this letter brief regarding a dispute about the search terms to be used the School District Plaintiffs in processing documents for review and production.

Pursuant to the Discovery Standing Order and Civil Local Rule 37-1, the Parties attest that they met and conferred by video conference, email, and correspondence on numerous occasions before filing this brief. On October 2, 2024, lead trial counsel for the Parties involved in the dispute attended the final conferral. Because all lead counsel are not located in the geographic region of the Northern District of California or otherwise located within 100 miles of each other, they met via videoconference. Lead trial counsel have concluded that no agreement or further negotiated resolution can be reached.

Attached are the following exhibits:

Exhibit A: Plaintiffs' Proposed Search Terms;
Exhibit B: Disputed Terms;
Exhibit C: Sampling Terms;
Exhibit D: Document Count Charts for the Parties' Search Term Proposals;
Exhibit E: Hit Reports for Defendants' and Plaintiffs' Last Proposed Search Terms;
Exhibit F: Responsiveness sampling for the "Five Terms".

Given that the next Discovery Management Conference is less than two weeks prior to the substantial completion deadline, the Parties respectfully request an in-person interim hearing on this matter prior to the next Discovery Management Conference with a preferred date of October 16, 2024, or at the Court's convenience.

Dated: October 10, 2024

Respectfully submitted,

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Defendants' Position: The parties are at an impasse with respect to approximately 80 search terms. At the core of the dispute are five terms that seek highly relevant information: "**social media**," **Facebook**, **YouTube**, "**mental health**" and "**Covid* w/10 quarantine**" (the "Five Terms"). Plaintiffs' own responsiveness sampling shows that the Five Terms yield a significant number of *responsive* documents. (For the remaining disputed terms, Plaintiffs have not conducted sampling.) Given the importance of the disputed terms and the nature of Plaintiffs' claims—which seek billions of dollars in purported damages—Defendants' proposed terms are reasonable and proportional. This is especially true because Plaintiffs are using TAR 2.0 *after* applying search terms to cull their document review set—which Plaintiffs themselves already argued in this case reduces the prospect of reviewing non-responsive documents. If Plaintiffs are concerned about their ability to complete document review on schedule, then the solution is for them to seek an extension, not to stymie Defendants' ability to defend against their sweeping claims.

Status of Search Term Negotiations and Remaining Disputes. Since the September 12 DMC, Defendants have dropped or narrowed *hundreds* of proposed terms,[1] further reducing the total universe of documents that hit on those terms by nearly *2 million* documents. After rebuffing for weeks Defendants' requests for responsiveness sampling, Plaintiffs finally provided Defendants with responsiveness sampling results for the Five Terms on October 1—but for only one school district. On average, the unique responsiveness rate for the Five Terms was 14.3%—meaning that approximately *one in seven* documents in the sample set hitting on these terms is responsive and *would not otherwise be captured by any other agreed-to terms*. Nevertheless, Plaintiffs have asserted without elaboration that the responsiveness rates "do not support the use of these terms" despite the fact that Plaintiffs are using TAR 2.0. For several reasons, they are wrong.

The Five Terms Seek Relevant Information and Are Proportional. *First*, the Five Terms are plainly designed to capture highly relevant information, and without them large volumes of *known* relevant documents would be excluded from discovery. For example, Plaintiffs' responsiveness sampling revealed that one in five documents in the sample set hitting on the term "**social media**"—which lies at the very core of these cases—are both responsive and not otherwise captured by their proposed search terms.[2] Plaintiffs already agreed to run the names of most Defendants' platforms (limited to documents sent from school district domains); there is no compelling reason to treat "**Facebook**" and "**YouTube**" differently.

Second, when the shoe was on the other foot, Plaintiffs insisted that Defendants use terms that resulted in a demonstrably *lower* responsiveness rate than the Five Terms return. For example, when Meta conducted responsiveness sampling on hundreds of terms proposed by Plaintiffs, Meta determined that those terms (1) nearly *tripled* the total number of hits yet (2) returned documents with a responsiveness rate of only *3.8%*. *See* ECF No. 929. Nevertheless, Plaintiffs insisted, and Meta ultimately agreed, to add many of those terms, including the term "**mental health**"—one of

[1] Plaintiffs' assertion that they have agreed to "thousands" of terms is misleading: At Plaintiffs' request, Defendants manually deconstructed dozens of search strings to simplify the process for Plaintiffs' vendors. But it is not accurate to claim those deconstructed terms are true "separate" terms, and the deconstruction process had *no* impact on the volume of documents.

[2] Plaintiffs cite two unreported decisions addressing responsiveness rates; they are inapposite because neither involved multi-billion dollar claims or use of TAR 2.0.

the Five Terms Plaintiffs are refusing to run on their documents, despite the fact that it has a nearly 10% responsiveness rate across Plaintiffs' documents.[3]

Third, Plaintiffs will utilize technology-assisted review (TAR 2.0) after the application of search terms—meaning they will likely never have to review *all* documents identified by the terms, let alone "millions" of non-responsive documents. *See* The Sedona Conference, *TAR Case Law Primer, Second Edition*, 24 Sedona Conf. J. 1, 17 (2023) (with TAR 2.0, documents that are more likely to be responsive are prioritized while documents below the designated responsiveness threshold are not elevated for human review or produced). Notably, Plaintiffs successfully pushed Meta to include a large number of broad search terms based on the fact that Meta was also using TAR 2.0. As Plaintiffs' counsel explained at the time, "it is critical not to use narrow search strings with limiters that would exclude relevant documents" when using TAR combined with search terms. 5/13/24 Ltr. from A. Faes to A. Simonsen at 3 (TAR 2.0 "has been shown to … identify[] a greater number of relevant documents more quickly and with less human effort" so parties can "meet tight production timelines [and] leverage a limited staff of human reviewers"). Where, as here, the difference between the percentage of documents that hit on Defendants' terms as compared to Plaintiffs' terms is *less than 10%* for the majority of school districts[4] *and* sampling indicates that Defendants' terms are capturing a meaningful number of responsive documents, Plaintiffs' utilization of TAR 2.0 to further cull the review set fundamentally undermines their complaints about an alleged burden from reviewing non-responsive documents.[5]

Finally, any assertion that Plaintiffs' status as school districts should excuse reasonable and proportional discovery—or provides a reason why *Defendants* should bear the costs of Plaintiffs meeting their discovery obligations—is unpersuasive and unwarranted.[6] Plaintiffs include large institutions that employ thousands of individuals and have annual budgets exceeding hundreds of millions of dollars,[7] and most importantly, these districts *elected* to pursue sweeping litigation against Defendants, seeking billions of dollars in compensatory damages, plus an undetermined amount in "abatement." Plaintiffs' counsel represented to the Court that they were prepared to invest resources necessary to litigate these cases. *See, e.g.*, ECF Nos. 8 & 11. As such, their claims of burden ring hollow. If Plaintiffs believe there is insufficient time or resources to complete their review by the substantial completion deadline, the solution is not to curtail Defendants' ability to obtain clearly relevant and proportional discovery. Instead, Plaintiffs should take the Court up on

[3] Notably, Plaintiffs have not conducted any null set sampling to support their assertion that their proposed terms are adequately capturing relevant documents. While Plaintiffs observe that parties are best situated to craft reasonable search parameters, it is equally established that "[t]he application of proportionality should be based on information rather than speculation." *See* Sedona Conference on Principles of Proportionality, Principle 4.

[4] For example, Defendants' proposed terms hit on 16.6% percent of documents collected by Charleston and Plaintiffs' terms hit on 8.5% of these documents.

[5] Plaintiffs claim their FERPA obligations will impact the pace of their review. Yet, the parties' proposed modifications to the protective order, ECF 1202, relieve Plaintiffs from having to redact documents for student identifiable information, resolving this very issue.

[6] Plaintiffs cite two cases concerning cost-sharing; these cases are inapposite because they involve costs-sharing requests by *defendants* or *nonparties*.

[7] The school districts with the highest hit counts for both parties' proposals are also three of the largest bellwether school districts and have budgets close to or over a *billion* dollars.

its prior offer to place the school district cases on a separate schedule, including extending their substantial completion and related deadlines, to accommodate their review.

The Remaining Terms Seek Relevant Information and Are Proportional. The parties are also at impasse regarding additional terms, such as "**shooting* w/10 school***". For many of the same reasons, these terms are also reasonable, proportional, and important to Defendants' ability to defend against Plaintiffs' claims. And any assertion of burden is undercut by the fact that many of these terms do not result in substantial additional unique hits (*i.e.*, the number of documents that hit on a given term and only that term)—for example, **"threat w/5 school"** returns *on average* ~1,600 unique hits per bellwether school district. Furthermore, Plaintiffs' refusal to run these terms is based on volume alone rather than any cogent principle: for example, they have agreed to run "**crisis w/5**" of various terms, including "**youth**" and "**teen**," yet inexplicably refuse to run "**crisis w/5 student.**" Plaintiffs should be ordered to run the proposed terms set out in Defendants' September 26 counter-proposal without further limiters.[8] *See* Ex. B, Column A.

Plaintiffs' Position: The School District Plaintiffs' proposed search terms are a reasonable and proportional means to cull documents that are responsive to Defendants' requests for production. Plaintiffs have agreed to run *over 1230* search terms and strings that result in a universe of over *3.7 million documents*. *See* Ex. A (Plaintiffs' Terms). Defendants' insistence that Plaintiffs run even more and broader terms is not proportional, nor even feasible given the substantial completion deadline. *See* Ex. B (Disputed Terms, including Plaintiffs' proposed modifications or reasons for rejection). It would unduly burden Plaintiffs with reviewing an excessive number of unresponsive documents and delay the case schedule.

Plaintiffs have provided a reasonable compromise. It is generally accepted that "[r]esponding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own [ESI]." *Weinstein v. Katapult Grp., Inc.*, 2022 WL 4548798, at *2 (N.D. Cal. Sept. 29, 2022) (quoting *The Sedona Principles, Third Edition*, 19 SEDONA CONF. J. 1, 11, 123 (Principle 6)). Neither a requesting party nor a court should prescribe in detail the steps that a responding party must take to meet its discovery obligations. *See, e.g., Edwards v. McDermott Int'l, Inc*., 2021 WL 5121853, at *3 (S.D. Tex. Nov. 4, 2021) ("district court judges should not micro-manage the parties' internal review procedures"). Plaintiffs have gone above and beyond what is required under the ESI protocol and worked cooperatively with Defendants in negotiating search terms, including providing dozens of hit reports and conducting statistically significant responsiveness sampling.

In an effort to reach compromise, Plaintiffs conducted responsiveness sampling on 6 terms with extraordinarily high hit counts that Defendants identified as important to them. The responsiveness sampling yielded results from 0.09% to 22%.[9] These rates do not warrant running

[8] Many of Plaintiffs' proposed limiters would carve out any document that does not include Defendants' platform names. *See* Ex. B, Column B. As Plaintiffs argued in this case, it is *critical* not to use narrow limiters when applying TAR 2.0

[9] The terms included: "social media" (20%); "Facebook" (7.22%); "YouTube" (12.78%); "mental health" (9.71%); covid* w/10 "emergenc* (0.09%); covid* w/10 quarantine (22%). Defendants agreed to drop "covid* w/10 "emergenc*". Social media use is ubiquitous in our

"really broad search terms that end up in ridiculous numbers of unresponsive documents." *Lawson v. Spirit AeroSystems, Inc.*, 2019 WL 1877159, at *3 (D. Kan. Apr. 26, 2019) (finding a reasonable responsiveness rate to be 85%); *see also, e.g., Gravitt v. Mentor Worldwide, LLC*, 2020 WL 7381479 (N.D. Ill. Dec. 15, 2020) (denying request to compel use of search terms that yielded a 27% responsiveness rate). Regardless, Plaintiffs proposed modifiers to narrow the terms to be more precise. *See* Ex. C. This is in addition to the terms that Plaintiffs have already proposed or accepted that are intended to capture the same sought after information (e.g., documents related to mental health, or Defendants' alternative causation defenses, such as COVID). It may be true that by not accepting Defendants' terms some responsive documents may be lost "somewhere along the way," *Lawson*, 2019 WL 1877159, at *3, but perfection in ESI is not the standard, *Valentine v. Crocs, Inc.*, 2024 WL 2193321, at *10 (N.D. Cal. May 15, 2024) (Kang, J.) ("Perfection in ESI is not required; rather a producing party must take reasonable steps to identify and produce relevant documents."); *Alivecor, Inc. v. Apple, Inc.*, 2023 WL 2224431, at *2 (N.D. Cal. Feb. 23, 2023) (same). Reasonableness is the standard; demanding that Plaintiffs run thousands of terms and review millions of nonresponsive documents so that nothing is left on the cutting room floor is not reasonable.

With respect to the other 74 terms in dispute (*see* Ex. B), Plaintiffs have either proposed modifiers that would anchor the terms to this litigation or have rejected the terms because they have agreed to *dozens* of other terms designed to capture the documents Defendants are seeking, including those that go to alternative causation. Defendants' claim that 1,600 unique hits on average does not demonstrate burden is inaccurate and misunderstands the hit reports. "Unique hits is the count of documents in the searchable set returned by only that particular term," and no other term.[10] This is not the total number of *documents* that would be generated by that particular term. The actual number of documents will fall somewhere between the total documents with hits (including family) and unique hits. "Threat* w/5 school*" has a total of 268,185 documents with hits (including family) and 19,728 unique hits across the districts (on average per district, 22,649 documents with hits (including family) and 1,644 unique hits), and the total number of documents to be reviewed lies between the two numbers. In short, although each individual term may not seem to have an extraordinary number of unique hits, in the aggregate the individual term can result in thousands of documents to be reviewed, many of which will be nonresponsive.[11] Narrowing these high hit count, low-richness terms is required to minimize wasteful review.

Concurrent with continuing efforts to reach a reasonable compromise, Plaintiffs have doubled-down on their efforts to review documents that hit on Plaintiffs' terms. Plaintiffs will keep the Court apprised if they need additional time to substantially complete production of documents past the November 5 deadline.

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society and the term returned documents promoting school activities to parents (e.g., kinder-welcome week), which are marginally relevant at best as Plaintiffs discussed with Defendants.

[10] Relativity, Search Term Reports, https://help.relativity.com/RelativityOne/Content/Relativity/Search_terms_reports.htm#:~:text=Unique%20hits%20is%20the%20count,and%20only%20that%20particular%20term. The reason to run deconstructed terms instead of large search strings as proposed by Defendants is to understand the hit counts for each term, not for vendor ease.

[11] A term with high unique hits and high documents with hits suggest the term is over-inclusive.

Defendants' request is not proportional or feasible under the case schedule. Defendants' continue to demand that Plaintiffs run overly broad terms yielding a review volume that is not proportional to the needs of the case and is not possible with less than 30 days before the November 5 deadline. Specifically, if the Court orders Plaintiffs to use Defendants' proposed terms, Plaintiffs would be required to review *over 6.4 million documents* as shown in the chart in Exhibit D, which reflects the document counts taken from the hit reports (Ex. E).

Plaintiffs estimate that this would consume over 128,000 attorney hours for first-level review alone based on the assumption that each attorney reviews at least 400 documents a day and is working 40 hours a week,[12] amounting to a highly burdensome and costly review that is not warranted given Defendants' overbroad terms. It appears that Defendants are determined to seek terms that would necessitate delaying the schedule, but this burden is true whether the documents are produced by November 5 or at some later date.

Plaintiffs will employ TAR 2.0 to reduce review of irrelevant documents, but that does not warrant use of poorly crafted, low-richness terms in the first instance, and will not render Defendants' proposal proportional. Meta itself previously explained why use of broad or imprecise search terms is not warranted even with the employ of TAR 2.0. *See* ECF 929 (Meta Letter Brief re Search Terms). Specifically, TAR 2.0 does not negate the need for manual review, and broad terms requiring extensive additional review have no benefit when these terms have a low responsiveness rate. Even if TAR 2.0 cuts the review volume in half, a review of this magnitude would still not be proportional or feasible under the current case schedule. In short, the burden of Defendants' search terms is not outweighed by the benefit.

The proper path forward is for Plaintiffs to run the Parties' agreed-upon search terms to date, and if Defendants identify deficiencies in the productions, the Parties can meet and confer about them.[13] If the Court orders Plaintiffs to run Defendants' proposed terms, Plaintiffs request an extension of time for substantial completion of document production to January 10, 2025. Plaintiffs also request an order that Defendants bear the cost of the additional review required by their terms. *See* Fed. R. Civ. P. 26(c)(1)(B) (allowing the allocation of expenses for discovery). Cost sharing would be appropriate here to protect Plaintiffs from the undue expense of reviewing millions of nonresponsive documents. *See, e.g.*, *Diesel Power Source v. Crazy Carl's Turbos*, 2017 WL 721995, at *3 (D. Utah Feb. 23, 2017) ("Under the proportionality and cost sharing principles found in the discovery rules, Plaintiff is ORDERED to pay one-half the production costs for this discovery."); *Couch v. Wan*, 2011 WL 2551546, at *5 (E.D. Cal. June 24, 2011) (ordering the Parties to "share the costs of producing requested electronic data").

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[12] Redactions to documents protected by the Family Educational Rights and Privacy Act (FERPA) will reduce the number of documents an attorney can review in a day. The pace of review to date, *without making FERPA redactions*, is on average 336 documents per day per attorney.

[13] Plaintiffs will also comply with the validation requirements in the ESI protocol, which does not require null set review and was not conducted during search term negotiations by any Defendant but Meta. *See* ECF 690, at § 11.

ATTESTATION

I, Lexi J. Hazam, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1 that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: October 10, 2024 *<u>/s/Lexi J. Hazam</u>*